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FILED
MAY 14 1964
JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 1017

ROSE COURTS, INC.,
Petitioner

v.

HARRY L. HASTINGS AND
MARRE S. HASTINGS
Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

W. H. Jewell
1550 Tower Building
Little Rock, Arkansas
Counsel for Respondents

INDEX

	Page
STATEMENT	1
REASONS FOR DENYING WRIT	4
1. THE PETITION PRESENTS NO FEDERAL QUESTION	4
2. IF FEDERAL QUESTION IS PRESENTED IT WAS NOT TIMELY NOR PROPERLY MADE	5
CONCLUSION	7
APPENDICES	8
A. PETITION FOR REHEARING BEFORE ARKANSAS SUPREME COURT	8
B. RULE 20, SUPREME COURT OF ARKANSAS	9

CITATIONS

CASES;

Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 74 L. Ed. 1107.	4
McGanitty Adm. v. Delaware-River Bridge Commission, 292 U. S. 19, 78 L. Ed. 1095.	6
Minnesota v. National Tea Company, 308 U. S. 55, 84 L. Ed. 920.	5
Williams v. Kaiser, 323 U. S. 471, 89 L. Ed. 398, 65 S. Ct. 363.	4
RULE 23, U. S. SUPREME COURT RULES	6

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BRIEF FOR RESPONDENTS IN OPPOSITION

FACTUAL STATEMENT

The cause presently on appeal is Petitioner's third attempt, through litigation, to deprive Respondents, or their predecessors in title, of ownership of an 84-foot strip of property in Little Rock, Pulaski County, Arkansas. The dispute concerns the boundary location between Lot 1 and Lot 2, Rapley Estate. Petitioner, Rose Courts, Inc., is the owner of the east part of Lot 2 and the Respondents, Harry L. Hastings and wife, are the owners of the west part of Lot 1. An unopened avenue divides the two lots.

Rose Courts, Petitioner, received its deed from Arkansas Courts, dated June 27, 1950; Arkansas Courts received its deed from Arkansas Real Estate Company, Inc.,

dated December 9, 1949; and Arkansas Real Estate Company, Inc., received its deed from Little Rock Investment Company, dated April 4, 1947.

Harry L. Hastings and wife received their deed from C. C. McCord, dated May 10, 1955; and C. C. McCord received his deed from the State of Arkansas, dated December 27, 1935.

Certain cases in the Pulaski Chancery Court need to be identified:

Case No. 82474 was by C. C. McCord, as plaintiff, against Arkansas Real Estate Company, Inc., as defendant. The decree rendered in February, 1949, recited that McCord's title to the west 156.3 feet of Lot 1, Rapley Estate, (that would be along the unopened avenue) was quieted, and that the boundary line between Lot 1 and Lot 4 (to the south of Lot 1, Rapley Estate, "is shown by Exhibit 8 herein, same being a plat of the survey made by C. T. Brandt, December 11, 1947"). McCord owned his portion of Lot 1 until May, 1955, and Arkansas Real Estate Company, Inc. owned its portion of Lot 2 until December, 1949. The parties to the present litigation claim through the respective parties in said Case No. 82474.

Case No. 90142 in the Pulaski Chancery Court, involving the same plaintiff and same defendant and same lands as Case No. 101718 (next paragraph), was dismissed by voluntary non-suit.

Case No. 101718 in the Pulaski Chancery Court was styled *Arkansas Real Estate Company, Inc.*, as plaintiff, v. *C. C. McCord and wife*, defendants, and filed January 18, 1955. In that case the Arkansas Real Estate Company, Inc. claimed ownership of the west 84 feet of Block 1, Rapley Estate, (same being a portion of the Hastings' (Respond-

ents) property). It will be observed that Arkansas Real Estate Company, Inc. conveyed its title to Lot 2 in 1949 to Arkansas Courts; yet, in 1955, Arkansas Real Estate Company, Inc. was claiming against McCord 84 feet from Lot 1, Rapley Estate. Against such claim in Case No. 101718, McCord pleaded that the decree in Case No. 82474 was *res judicata* against Arkansas Real Estate Company, Inc.; and by decree of July 28, 1955, McCord's plea of *res judicata* was sustained.

Case No. 107579 in the Pulaski Chancery Court is the present case, and Hastings (Respondent) has pleaded the earlier cases as *res judicata*.

Mr. R. M. Traylor, president of Rose Courts and also president of both of the predecessor corporations, Arkansas Courts and Arkansas Real Estate Company, Inc., as well as the majority and principal stockholder of each, was called as a witness by Rose Courts in this case and admitted on cross-examination that the 84 feet involved in the present suit were the same 84 feet that were involved in Case No. 101718.

The trial court in this litigation, a different chancellor from those in the earlier cases, denied the plea of *res judicata*.

On appeal, the Supreme Court of Arkansas reversed and remanded, sustaining the plea of *res judicata*.

Upon proper application to the Arkansas Supreme Court, Petitioner's petition for rehearing was denied.

Nowhere in the pleadings or proceedings, at any stage, did Petitioner raise the issue of any Federal question.

REASONS FOR DENYING WRIT

(1) THE PETITION PRESENTS NO FEDERAL QUESTION.

The Petitioner has failed to show in its Petition for a Writ of Certiorari, that any Federal question is involved.

Review by this Supreme Court of a judgment of a state court requires that it appear from the record affirmatively, or by fair implication, that a decision as to a Federal question was necessary to the state's determination of the cause. *Williams* v. *Kaiser* (1945), 323 U. S. 471, 89 L. Ed. 398, 65 S. Ct. 363.

In Petitioner's complaint, praying that Respondents be required to remove certain poles from Petitioner's property and for a permanent restraining order, there was nothing to indicate or intimate there was involved any Federal question. Petitioner's contentions for the writ are actually based on the claim that the decision of the Arkansas Supreme Court is erroneous. However, no constitutional provision is violated nor any Federal question raised by the mere allegation of error in the decision of a state court. For as was stated by this Court in *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, 281 U. S. 673, 74 L. Ed. 1107:

> "It is true that the courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this court's power to review decisions of state courts is limited to their decisions on federal questions; and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the

14th Amendment or otherwise confer appellate jurisdiction on this court."

Moreover, the Supreme Court of Arkansas did not commit any error in its conclusion that Respondents' plea of *res judicata* should be sustained.

Petitioner's contention that the Supreme Court of Arkansas denied it its right to property without due process of law in sustaining Respondents' plea of *res judicata* does not present a Federal question. The Court had before it a question of law under the state's controlling statutes and its own prior decisions.

Petitioner must show, before this Court will take jurisdiction to review the decision of the Supreme Court of Arkansas, that a Federal question arose in the state court, that the question was decided by the state court or, by necessary intendment, it was raised and a decision made. It is necessary to show that a Federal question actually arose. See, Annotation, Review of State Decisions, Section III, following *Minnesota* v. *National Tea Company*, 308 U. S. 55, in 84 L. Ed. 920, at page 927. This, Petitioner has failed to do.

(2) IF FEDERAL QUESTION IS PRESENTED IT WAS NOT TIMELY NOR PROPERLY MADE.

Petitioner, by its own statement, recognizes that no Federal question was timely nor properly raised, when it says at pp. 4-5 of its Petition for a Writ of Certiorari:

> "Petitioner has not heretofore raised the issue that an upholding of *res judicata* would be a denial of the process . . ."

Following the decision of the Arkansas Supreme Court sustaining Respondents' plea of *res judicata*, Petitioner

filed its Petition for Rehearing with the state court within the time and in the manner provided by the Rules of the Supreme Court of Arkansas. (See Rule 20, Supreme Court of Arkansas, Appendix B, p. 9.) However, no constitutional or Federal question was asserted even in this Petition for Rehearing and certainly Petitioner had the opportunity and obligation to raise any Federal question on rehearing. (See Petition for Rehearing, Appendix A, p. 8.) The Supreme Court of Arkansas has never been called upon or given the opportunity to consider or rule on the Federal question being raised by Petitioner for the first time in its Petition for Writ of Certiorari. Such failure to raise the Federal question is fatal in conferring jurisdiction upon this Court.

The established rule of this Court with regard to the timely presentation of Federal questions was reiterated in *McGanitty, Adm. v. Delaware River Bridge Commission*, 292 U. S. 19 at p. 20, 78 L. Ed. 1095 at p. 1096, when this Court said:

> "No Federal question was raised prior to the petition for rehearing in the Supreme Court of the State, which was denied without move. Appellant insists that questions under the Fourteenth Amendment were thus raised at the first opportunity. The petition for rehearing does not appear in the record. Nor does the record contain the pleadings, the evidence, or any findings by the State Court upon the question of fact involved . . . The appeal is dismissed for the want of a properly presented substantial Federal question."

In addition, Petitioner has not and cannot comply with Rule 23 of this Court, more particularly Subsection 1(f), which provides as follows:

"1. The petition for writ of certiorari shall contain in the order here indicated—

"(f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the courts charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari."

CONCLUSION

Because Petitioner has clearly had its day in Court and because the petition fails to show from the record that a Federal question is presented and because the petition clearly shows no timely nor proper presentment of a Federal question which would lead this Court to review a decision of the Supreme Court of the State of Arkansas, it is submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

W. H. JEWELL.
1550 Tower Building
Little Rock, Arkansas
Counsel for Respondents

APPENDIX A
SUPREME COURT OF ARKANSAS

HARRY L. HASTINGS, ET UX, AND
HASTINGS REALTY COMPANY ..... *Appellants*

v. Series 5, No. 3074

ROSE COURTS, INC. ..... *Appellee*

PETITION FOR REHEARING

Comes Rose Courts, Inc., appellee, and respectfully represents that a rehearing should be granted in the above styled action on the following grounds:

I. Appellee believes that the majority opinion is based on the erroneous factual conclusion that Arkansas Real Estate Company, Inc. *actually* claimed, in Case No. 101718, the same land which is involved in the case at bar.

II. Appellee believes that the majority opinion was in error when it ruled that the testimony of R. M. Traylor, one of the witnesses on behalf of the appellee is a conclusive admission that the parcel which Arkansas Real Estate Company, Inc. claimed in Case No. 101718 is the same land which is involved in the case at bar.

III. Appellee believes that the majority opinion was in error when it ruled that Cases No. 82474 and No. 101718, which involve the issue of title to part of Lot 1, Rapley Estate, are *res judicata* to the issue presented in the case at bar, which involves only the location of the boundary between Lots 1 and 2, Rapley Estate.

APPENDIX B

PROCEDURAL RULES OF THE SUPREME COURT OF THE STATE OF ARKANSAS JUNE, 1957

Rule 20.

PETITIONS FOR REHEARING

(a) *Time Limited for Filing—Service.*—Petitions for rehearing, briefs thereon, and evidence of service both of petition and brief, must be filed within 17 calendar days from date of decision.

* * * * *

(f) *Ground Stated—Certificate of Counsel.*—The petition must briefly and distinctly state the grounds relied upon, and be supported by counsel's certificate of brief that there is merit in the petition and that it is not filed for the purpose of delay.